

Title Insurance Stakeholder
Meeting
July 30, 2014

Welcome

- Introductions
- Purpose of meeting
 - To discuss division of Regulation 3-5-1 into separate regulations addressing particular aspects of Title Insurance
 - Reasons for action
 - Size
 - Unwieldy
 - Easy to address issues as they arise

Welcome

- Comment period after each section
- Very helpful if industry submits comments in writing about today's meeting
- This is a collaborative effort

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

Repealed and Repromulgated in Full Regulation 3-5-1

TITLE INSURANCE

Section 1 Authority

Section 2 Scope and Purpose

Section 3 Applicability

Section 4 Definitions

Section 5 Rules Regarding Rates and Fees

Section 6 Rules Regarding Standards of Conduct for
Title Insurance Entities

Section 7 Rules Regarding Consumer Protections

Section 8 Rules Regarding Agent Licensing

Section 9 Rules Regarding Fiduciary Duties

Section 10 Enforcement

Section 11 Severability

Section 12 Incorporated Materials

Section 13 Effective Date

Section 14 History

Appendix A Good Funds Agreement

Division of Regulation 3-5-1 into Separate Regulations

Title Insurance Rates and Fees

Title Insurance Standards of
Conduct

Title Insurance Consumer
Protections

Title Insurance Agent and
Entity Licensing

Title Insurance Fiduciary
Duties

Title Insurance Rates and Fees

- **§ 10-11-118, C.R.S.** – (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title. (2) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner the new or amended rate or fee, with justification for the new or amended rate or fee...

Title Insurance Rates and Fees

- Section 5 of current Reg. 3-5-1
 - A. Availability of schedule of rates and fees for public inspection
 - B. Rate cards and schedules clearly denote the title company that has filed them
 - C. May charge different fees, but must be filed and disclosed
 - D. Anti-discrimination provision
 - E. Title company not responsible for title agent's failure to comply with filing requirements

Title Insurance Rates and Fees

Current Filing Requirements

Licensed Insurance Companies

1. Electronic filing
2. 30 days prior to use
3. Justification for rates
 - ✓ Expenses
 - ✓ Expected losses and loss ratios
 - ✓ Rate history
 - ✓ Methodology and material assumptions
 - ✓ Other determining factors

Licensed Agencies

1. 30 days prior to use
2. Justification for fees
 - ✓ Expense provisions
 - ✓ Actual expenses
 - ✓ Other determining factors

Title Insurance Rates and Fees

Title Agency Proposals

- Each Title Agency will make a filing that is licensed in the state
- Use of SERFF (System for Electronic Rate and Form Filings) for all Title Agencies
 - Efficiencies
 - Elimination of paper filings
 - Definitive received date
 - Ability to track status in “real time”
 - Improves communication
 - Agency is notified immediately when filing is closed
 - Record of communications means more transparency
 - Cost
 - Pay-as-you-go v. bulk

Title Insurance Rates and Fees

Consumer Tool and Title Agency Fee Comparison Sheet

- The Division is developing and refining a title insurance fee comparison tool for consumers
- User-friendly and effective
- Requires Title Agencies to file a “Title Agency Fee Comparison Sheet”
- The Division will post Comparison Sheet information to the web

Standards of Conduct for Title Insurance Entities

- **§ 10-11-108 (1), C.R.S.** A title insurance company or title insurance agent shall not: (a) Engage in the business of guaranteeing the payment of the principal or interest of bonds, notes, or other obligations; (b) Transact, underwrite, or issue any kind of insurance other than title insurance; (c) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business; (d) Give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered. For purposes of this article, “services actually rendered” shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices; “services actually rendered” shall not include the mere referral of title insurance business.

Standards of Conduct for Title Insurance Entities

- Section 6 of current Reg. 3-5-1:
 - Remuneration provisions – Sections A, B, C
 - Unlawful inducements provisions – Section D
 - Affiliated Business Arrangements – Section E and § § 10-11-124 & 126, C.R.S.
 - Allowable Practices – Section F

Standards of Conduct for Title Insurance Entities

- The Division proposes the following order, clarification, and update:
 - General rule and considerations (Sections A and B)
 - Allowable Practices (Section F)
 - Unlawful Remuneration (Section C)
 - Unlawful Inducements (Section D)
 - Affiliated Business Arrangements (Section E)

Title Insurance Consumer Protections

- **§ § 10-11-119, and 121, C.R.S.**
 - (119) In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions of this article, shall apply to the business of title insurance and to title insurance companies.
 - (121) The provisions of this article shall apply to all title insurance companies, title insurance rating organizations, title insurance agents, applicants for title insurance, policyholders, and persons and business entities deemed to be engaged in the business of title insurance. In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions or purposes of this article, shall apply to such persons and entities.

Title Insurance Consumer Protections

- Section 7 of current Reg. 3-5-1:
 - Reasonable search and examination of records
 - Full disclosure of impairments of record, exceptions, and whether impairment will be insured over or deleted
 - Except for standard or pre-printed exceptions, all proposed exceptions must make reference to recording information
 - No generic exceptions without written instructions
 - Updating of commitments to closing
 - Comply with good funds law
 - Require written instructions
 - Proper closing and recording
 - Responsibility for agent oversight
 - Maintenance of records
- These areas are particularly important because they directly impact consumers. Preventing potential consumer harm before it happens eliminates the need to fix it after the fact, benefiting industry and consumers alike.

Title Insurance Consumer Protections

Possible additions:

- Timely recording of documents
- Timely issuance of policy documents
- Reconciliation of settlement funds

Title Insurance Producer Licensing

- **§ 10-11-116 (1)(a), C.R.S.** Title insurance agents shall be licensed in the manner provided for insurance producers in part 4 of article 2 of this title, . . . (2) No individual, partnership, corporation, or other legal entity contractually authorized by a title insurance company as its agent to issue or countersign binders or policies on its behalf, . . . shall be licensed unless, in addition to all other requirements of this article and of articles 1 to 3 of this title, the agent possesses actual paid-in cash capital, or, if an individual, has a net worth, of at least ten thousand dollars.

Title Insurance Producer Licensing

- Section 8 of current Reg. 3-5-1
 - Section A – Accountant Letter of minimum net worth or paid-in capital
 - Section B – Affiliated Business Arrangement disclosure

Title Insurance Producer Licensing

Possible additional producer licensing statutory requirements:

- General producer licensure conditions including pre-licensing education, continuing education, and capital requirements
- Potential for licensing closing and settlement services

Title Insurance Fiduciary Duties

- **§ 10-2-704 (1)(a), C.R.S.** All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums. . . . (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date, or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing. . . . (3) No insurance producer under this article shall commingle premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

Title Insurance Fiduciary Duties

- Section 9 of current Reg. 3-5-1:
 - Maintenance of fiduciary capacity over funds in separate account
 - Commingling funds prohibited
 - 3 day deposit rule
 - Title entity cannot earn interest on fiduciary funds unless disclosure made to all parties
 - Requirement for written instructions as to disbursement of funds

Title Insurance Fiduciary Duties

- Ongoing and troubling issue of escrow theft and title insurance fraud
- NAIC -Title Escrow Theft and Title Insurance Fraud Work Group and White Paper (December 2013)

Title Insurance Fiduciary Duties

Possible additions:

- Three-way reconciliation of settlement funds
- Timely issuance of policy documents
- Ideas from NAIC White Paper

Next Steps

- Comments about this presentation for dividing up Reg. 3-5-1
 - Written comments are encouraged and should be emailed to: dora_ins_rulesandrecords@state.co.us
 - Due date August 20, 2014
- Creation of working groups to work on particular Regs.
 - Need subject matter experts for the working groups with mix of companies, agents, and other stakeholders
 - Working group size will need to be limited, but all meetings are open
 - Schedule meetings serially, so staff have opportunity to work through issues
 - Rate and fees working group to start in early September

Thank You!